IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.2799 OF 1998

Kamaldeep Singh Sokhi : Applicant.

versus

The Vysya Bank Leasing Ltd.

and anr. : Respondents.

Mr.Subhash Jha for the applicant.

None for Respondent No.1, though served.

Ms.Rajeshree Gadhavi, APP, for State.

CORAM : V.M.KANADE, J.

DATED : 30th January 2006.

ORAL ORDER

1. Heard the learned counsel appearing on behalf of the applicant. None appears on behalf of Respondent No.1, though they are served.

2. By this application, the applicant is challenging an order of issuance of process

passed by the Additional Chief Metropolitan Magistrate, 40th Court at Girgaum, Mumbai on a complaint which was lodged by Respondent No.1 under Section 138 of the Negotiable Instruments Act.

3. The order of issuance of process is challenged primarily on two grounds. Firstly, it was alleged that the applicant had resigned from the company on 27th April 1997 and, the intimation to that effect was given to the Registrar of Companies and, that the cheques were issued in September, October, November 1997 and, therefore, the applicant was not liable towards repayment of the amount mentioned in the cheques which were issued by the company. Secondly, it was submitted that the applicant was a guarantor of the principal borrower and, therefore, he was not liable under the provisions of Section 138 of the Negotiable Instruments Act.

4. Though the Respondent No.1-company is served, non appears on behalf of them. The fact that the applicant had resigned as a Director of the company has not been controverted. Form No.32, which is annexed at Exhibit-E to the

application, discloses that the applicant had resigned from Board as Director and, the intimation was given to the Registrar of Companies on 30th May 1997. A letter was also returned to the applicant informing him that a Resolution was passed by the Board accepting his resignation and he was relieved form his duties with effect from 30/05/1997. In view of this documentary evidence, which has not been controverted by Respondent No.1, though they are served and, in view of the judgment of the apex Court that in such case unless there is a specific averment in the application that such a Director was in-charge and in control of day-to-day affairs of the company, he is not liable to be prosecuted. In view of this settled position of law, the present application will have to be allowed and the process issued against the present applicant is liable to be quashed. In the result, the application is allowed in the above terms and the process issued against the applicant is quashed.

5. The Additional Chief Metropolitan Magistrate is, however, directed to proceed with the case on merits so far as other accused are

concerned and decide the case as expeditiously as possible and in any case within a period of six months. Office is directed to immediately intimate the Additional Chief Metropolitan Magistrate, 40th Court at Girgaum, Mumbai, to proceed with the hearing of the complaint No.527/S/98 filed by Respondent No.1 and decide it as expeditiously as possible and in any case within a period of six months. Application is disposed of.

[V.M.KANADE,J]